

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2718 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgement?-Yes.

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2. To be referred to the Reporter or not?-Yes.

3. Whether Their Lordships wish to see the fair copy  
of the judgement?-Yes.

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil  
Judge?-No.

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GUJARAT CABLE TV OPERATORS NETWORK ASSOCIATION

Versus

STATE OF GUJARAT

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Appearance:

MR KB PANDE for Petitioners

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CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and  
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 29/04/99

C.A.V. JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

First petitioner is an Association of Cable T.V.  
Operators and petitioners 2 to 28 are said to be the  
members of the first petitioner. Petitioners challenge  
the constitutional validity of Gujarat Entertainments Tax

(Amendment) Act, 1993 and pray that the provisions contained in the said Act and its consequential Rules and the Circulars issued under the said Act and the Rules be held ultra vires and the respondents be directed to refund the tax collected from the petitioners under the provisions of the said Act. It is also prayed that Annexure 'B' letter issued by the third respondent be set aside.

The petitioners, as Cable T.V. Operators, receive television signals with the help of Antenna and are re-transmitting these signals to enable their customers to view film or moving pictures or series of pictures, or serials or any other programme transmitted through television signals. Subscribers are able to see these transmissions with the help of this Cable Television system. The petitioners, as Cable Television operators, collect subscription from their customers and also the installation charges or connection charges for giving access to their antennas. The Gujarat Entertainment Tax Act 16 of 1977 was amended by the Gujarat Entertainments Tax (Amendment) Act, 1993. As per Clause 6B of the said amendment Act, tax was imposed on exhibition of entertainment by means of antenna or cable television. Clause 6C of the Act directs that there shall be a registration and no proprietor providing an entertainment with the aid of any type of antenna or cable television shall carry on television exhibition without obtaining a valid Certificate of Registration from the Collector of Entertainments Tax. The petitioners herein have not specifically stated as to which provision of the amended Act is to be held ultra vires, but a contention has been raised that the entire Act and the Rules are to be held ultra vires as the State Government lacks legislative competence. The petitioners allege that the State Legislature is not competent to enact the said amendment Act as the subject matter comes within the purview of Entry 31 of List I of the Seventh Schedule. It is argued by the petitioners' counsel that there is already a Union legislation under the said Act, viz., Cable Television Networks (Regulation) Act, 1995, and, therefore, the impugned Act and the Rules are passed without any legislative competence.

The contention of the petitioners' counsel is that impugned legislation will come within the ambit of the subject covered by Entry 31 of list I of Seventh Schedule to the Constitution of India as the nature of bu...

communication and any legislation touching this subject

shall be made by the Parliament.

Entry 31 of List I of Seventh Schedule reads as follows :-

"31. Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication."

The Entry gives legislative competence to the Parliament to pass any law relating to posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication. It is true that Re-transmission of Television programmes received through Satellite transmission is a form of communication and Parliament alone has got legislative competence and that is why the Parliament has passed The Cable Television Networks (Regulation) Act, 1995 to regulate the cable television network. It was noticed that cable operators, using their antenna, used to catch the signals of foreign television networks and re-transmit to Indian televiewers. The foreign programmes available in these satellite channels are predominantly western, totally alien to our culture and it was apprehended that it may have deleterious effect on our culture and civilization. In order to regulate operation of cable television network in the entire country to bring about a uniformity in their operation, the Central Act was passed. As per the provisions of the Act, cable operators have to register their names and no person shall transmit or re-transmit through cable service any programme contrary to the prescribed programme code. It is also made compulsory that the cable operators shall re-transmit at least two Doordarshan Channels. It is clear that the Act is intended to regulate the operation of cable television network and to see that viewers of television are not allowed to have access to undesirable programmes that may be transmitted through satellite televisions.

The impugned enactment is for taxing the cable operators, who provide entertainments to their customers through cable television system. Admittedly, the cable operators, by using disc antennae, receive national and international programmes, which include news, tele-serials, movies, sport programmes and various other kinds of entertainments. These programmes are relayed round the clock and cable operators provide such entertainment to their subscribers on payment of fees.

The Gujarat Entertainments Tax (Am...

1993 was enacted to bring in the cable operators under the provisions of the parent Act. The legislative competence of this amendment Act could be traced to Entry 62 of List II of the Seventh Schedule, which reads as follows :-

"62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling."

On liberal interpretation of the provisions of the Constitution, the legislative competence of this Act could also be traced to Entry 60 of List II of the Seventh Schedule as it gives power to State Legislature to enact any law relating to taxes on professions, trades, callings and employments. There i...

of decisions to the effect that the various Entries in the State List of Seventh Schedule are not exclusive powers, but fields of legislation. These Entries demarcate contours of the various fields of legislation and widest amplitude shall be given to the language of these Entries (see the following observations made by the Honourable Supreme Court in India Cement Ltd. v. State of Tamil Nadu, AIR 1990 SC 85, in paragraph 18 at page 91 :-

"... The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied restriction on the legislative power conferred by Art. 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. Hence, the language of the entries should be given widest scope, D.C. Rataria v. Bhuwalka Brothers Ltd. (1995) 1 SCR 1071 : (AIR 1955 SC 182), to find out which of the meanings is fairly capable because these set up machinery of the Govt. (Sic). Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In

interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other one in the same list. It is in this background that one has to examine the present controversy...."

From Entry 62 of List II of the Seventh Schedule, it is clear that the State Legislature is competent to pass any law for levying taxes on entertainments and amusements. The counsel for the petitioners would contend that they are not providing any amusements or entertainments and by using antenna or disc antenna, they only receive the satellite television transmission and re-transmit the same to the viewers and, therefore, they are not liable to pay entertainment tax. The contention of the petitioners is not tenable. The petitioners, admittedly, with their antenna receive television signals transmitted through national and international satellite network and by re-transmission of the signals by wire or other means, they allow the viewers of the television sets at the residential or non-residential place to view the films or moving pictures or series of pictures, or serials or any other programme and such viewers are connected to the central system and, admittedly, the petitioners receive contribution or subscription from such subscribers for the entertainments or amusements provided by the petitioners. The contention of the petitioners that the cable operators are not providing any amusement or entertainment to the subscribers is without any basis and their activities would certainly come within the ambit of the Gujarat Entertainments Tax (Amendment) Act, 1993.

The counsel for the petitioners vehemently contended that in view of the Central Act, viz., Cable Television Networks (Regulation) Act, 1995, the impugned enactment is not necessary and if at all any tax could be levied, it could only be done by the Central Government. The above plea cannot be accepted as the State Legislature has got competence to levy tax on entertainment or amusement and the purpose of the impugned enactment is to levy tax on entertainment, whereas the Central Act is intended only to regulate the cable television networks. Therefore, we do not find any force in the contention advanced by the petitioners' counsel that the provisions contained in the Gujarat Entertainments Tax (Amendment) Act, 1993 are ultra vires the Constitution.

The counsel for the petitioners relied on a

decision in India Cement Ltd. v. State of Tamil Nadu, AIR 1990 SC 85. We do not think that this decision has any application to the facts of the present case. That was a case where the Tamil Nadu Legislature passed an enactment to impose cess on royalty on mineral rights. It was held that the tax on royalty was beyond the competence of the State Legislature as there was a Central Act, covering the field and in view of the central enactment, it was held that the Central Act covered the field and the State Legislature was denuded of its competence under Entry 23 of List II of the Seventh Schedule of the Constitution. The plea of the State Government that it had legislative competence under Entry 49 of List II as it was tax on land was rejected. It was held that royalty on minerals was not a tax on land, but a payment for user of land and, consequently, the said Act was held to be ultra vires the Constitution. The said decision has no application here as it is clear that the State Legislature has got competence to pass the impugned Act.

Lastly, the petitioners' counsel contended that Annexure 'B' notice issued by the 3rd respondent is without any jurisdiction and illegal. Annexure 'B' notice is not issued to the petitioners. The petitioners claim to be sub-operators. The 3rd respondent issued the said notice, emphasizing that under Section 6C read with Rule 3(1), the responsibility to pay entertainment tax is on the main cable operator, who transmit or re-transmit the programmes by getting connection from the cable operators, and the sub-operators are having control rooms and disc antennas. In Annexure 'B' letter, it is stated that the duty to pay entertainment tax is on the main cable operators and it is also emphasized that the main cable operator shall recover the entertainment tax from the sub-operators, who have given connection to the various subscribers. The counsel for the petitioners submitted that in Annexure 'B', it is stated that the sub-cable operators are not required to register their names and the steps are likely to be taken by the 3rd respondent to cancel the registration. If at all any such steps are taken, there are statutory remedies available to the petitioners. At present, the petitioners have got registration and it is not stated in Annexure 'B' that such registration is going to be cancelled and, admittedly, the petitioners have not received any notice regarding the cancellation of their registration. Therefore, we do not find any reason to interfere with Annexure 'B' letter issued by the 3rd respondent. The petitioners are at liberty to seek appropriate remedies in case any steps are taken for

cancellation of their registration.

The Special Civil Application is without any merit and it is accordingly dismissed, in limine.

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(apj)